IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1338 OF 2006

Sahil Khan .... Petitioner
V/S
M/S. HASHMAT AND CO. .... Respondents

Mr. S. N. Deshpande for petitioner

CORAM: D. G. KARNIK **J.**

DATE:12/6/2006

P.C.:

1. The petitioner was found guilty of misconduct in a domestic enquiry and was consequently dismissed. The order of dismissal was challenged by way of reference under Section 10 of the Industrial Disputes Act. The Labour Court held that the enquiry was fair and proper and that the findings recorded by the enquiry officer were not perverse. The Labour Court , therefore declined the relief of reinstatement. That order is impugned in this petition.
2. Learned counsel for the petitioner made three contentions before me. Firstly, he submitted the enquiry was not fair and proper as

the petitioner was not granted sufficient adjournment. Secondly, submitted counsel, that the subsistence allowance was not paid during the course of the enquiry and therefore the petitioner did not have a fair opportunity to defend himself in the enquiry which became unfair. Lastly, he submitted that the punishment awarded was disproportionate.

3. Learned counsel for the petitioner fairly admitted that the subsistence allowance was paid to the petitioner before hearing in the enquiry but was paid late. Therefore this is not a case of non- payment of subsistence allowance but a case of delayed payment of subsistence allowance. The present case is therefore distinguishable from the decision of the Supreme Court in **Fakirbhai Fulabhai Solanki vs. The Presiding Officer & Anr.**, reported in 1986 1 C.L.R. 440 S.C., relied upon by the petitioner.

4. The petitioner had asked for an adjournment on the ground that the representative of the petitioner was to appear for an examination. Short adjournment of three days was granted by the enquiry officer. What should be the reasonable period of adjournment is in the discretion of the enquiry officer. I do not find that the enquiry officer exercised his discretion so as to render it unfair. In the circumstances I am unable to accept the

contention that the enquiry was unfair or the findings were perverse.

5. Relying upon a decision of this court in **Blaze Advertising (Private) Ltd., Bombay vs. Blaze Advertising and Allied Companies Employees' Union and ors.**, reported in 1995 (II) LLN 316, learned counsel contended that shouting the slogans that the employer is a thief, cannot be regarded as misconduct and the other misconducts do not warrant punishment of dismissal. In the present case it is held that the petitioner was held guilty of several misconducts. Firstly, it was held that the petitioner staged the demonstration during the working hours. It was also held that the petitioner remained absent during his duty hours and shouted dirty slogans in demonstrations in duty hours. The charge is not only of shouting dirty slogans but remaining absent during the working hours and shouting dirty slogans during that time. Enquiry officer has also recorded a finding of fact that the petitioner was habitually late in attending his duties. In view of these findings it cannot be said that the punishment imposed was disproportionate.

6. The point whether the punishment awarded was disproportionate was not canvassed before the Labour Court. No issue has been framed in that regard. In the circumstances it is not possible to hold that the punishment is disproportionate. The petition is rejected summarily.

(D. G. KARNIK **J**)